

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-00-1982-5-MQA  
FILED DATE - 10/27/00  
Department of Health  
By: Vicki R. Kenan  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO.: 1997-00012  
LICENSE NO.: ME0022756

HUMBERTO A. GOMEZ, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on October 7, 2000, in Orlando, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises, the Board rejected the Consent Agreement and offered a Counter Consent Agreement, which was accepted on the record by the parties. The Counter Consent Agreement incorporates the original Consent Agreement with the following amendment:

The requirement for a reprimand as set forth in Paragraph 2 of the Stipulated Disposition is deleted.

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated by reference herein with the amendment set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent Agreement as amended.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 17<sup>th</sup> day of October, 2000.

BOARD OF MEDICINE

*for* Larry Williams  
GEORGES A. EL-BAHRI, M.D.  
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Humberto A. Gomez, M.D., 10351 Southwest 89<sup>th</sup> Street, Miami, Florida 33176; to Sean M. Ellsworth, Esquire, Dresnick, Ellsworth & Felder, Suntrust Plaza, Suite 701, 201 Alhambra Circle, Coral Gables, Florida 33134; and by interoffice delivery to Kathryn L. Kasprzak, Chief Medical Attorney, and Simone

or before 5:00 p.m., this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

AHCA Case No. 1997-00012

HUMBERTO GOMEZ, M.D.,  
Respondent.

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CONSENT AGREEMENT

Humberto Gomez, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0022756.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

#### STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

#### STIPULATED DISPOSITION

1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, Respondent read Chapters 455, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. REPRIMAND. The Respondent shall receive a reprimand from the Board of Medicine.

3. FINE. The Board shall impose an administrative fine in the amount of \$1,500.00 dollars against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within SIX (6) MONTHS of its imposition by Final Order of the Board. THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN SIX (6) MONTHS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH F OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

4. CONTINUING MEDICAL EDUCATION. Respondent shall attend ten (10) hours of Category I Continuing Medical Education in the area of risk management within one (1) year of the date of the Final Order. Respondent shall submit a written plan to the Chairman of the Probation Committee for course approval prior to the completion of said courses. In addition, Respondent shall submit documentation of completion of these courses in his required reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probation Committee, said courses shall consist of a formal live lecture format.

5. REIMBURSEMENT OF COSTS. In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Medicine office. Such costs shall not include any attorney's fees incurred by the Agency for the prosecution of this case. The agreed upon Agency cost to be reimbursed in this case is \$1,093.00. The costs shall be paid by the Respondent to the Board of Medicine within SIX MONTHS of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN SIX MONTHS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH F OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS.**

STANDARD PROVISIONS.

1. Respondent's probation shall be governed by the attached "Standard Terms Applicable to Consent Agreements," Exhibit B, which is incorporated as if fully set forth herein.

2. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

3. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence. However, Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

4. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

5. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A herein.

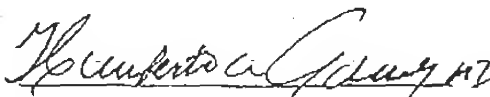


6. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

7. Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

8. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Furthermore, should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

SIGNED this 21 day of August, 2000.

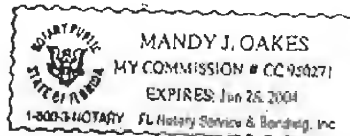
  
Humberto Gomez, M.D.

Before me, personally appeared Humberto A. Gomez, MD, whose identity is known to me by Driver's license (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 31 day of August, 2000.

Mandy J. Oakes  
NOTARY PUBLIC

My Commission Expires:



APPROVED this 6th day of Sept., 2000.

Robert G. Brooks, M.D.  
Secretary, Department of Health

By: Kathryn L. Kasprzak  
Kathryn L. Kasprzak  
Chief Attorney  
Medical Section

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, )  
)  
PETITIONER, )  
)  
v. )  
)  
HUMBERTO A. GOMEZ, M.D., )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

CASE NO. 97-00012

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Humberto A. Gomez, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the authority of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number ME 0022756. Respondent's last known address is 10351 S.W. 89th Street, Miami, Florida 33176-1502.

3. Respondent was initially licensed as a physician in the State of Florida on or about October 18, 1974. Upon information and belief, Respondent specializes in anesthesiology.

4. On February 20, 1996, Patient M.S., age 56, was admitted to Cedars Medical Center in Miami, with a primary diagnosis of severe peripheral vascular disease with bilateral occlusion of proximal superficial popliteal arteries, and a secondary diagnosis of chronic obstructive pulmonary disease (COPD). Patient M.S. was scheduled to undergo a right femoral popliteal bypass surgery. Prior to the procedure, no arterial blood gas specimen was drawn to determine a blood gas baseline for Patient M.S.

5. On February 21, 1996, Dr. Dagoberto J. Garces performed the bypass surgery. Respondent was the anesthesiologist for the procedure.

6. On February 21, 1996, anesthesia was commenced at approximately 9:30 a.m. Arterial blood gas was read at 10:56 a.m., and included a pH of 7.31, a pCO<sub>2</sub> of 43, with a -4 Bicarbonate deficit; this initial metabolic acidosis was not corrected until approximately 2:06 p.m., when another blood gas showed a pH of 7.23, pCO<sub>2</sub> of 25 and a bicarbonate deficit of -16.

7. Respondent utilized a central venous pressure (CVP) catheter, along with a "guide wire", a device used to assist in positioning and moving an intravenous catheter. The CVP catheter was inserted by Respondent into Patient M.S.'s right jugular vein.

8. Respondent lost the guide wire in Patient M.S.'s venous system in the course of utilizing the CVP catheter.

9. Following the procedure, a portable chest x-ray was taken for Patient M.S. The radiology report for the x-ray indicates the following in pertinent part: "There is air in the subcutaneous tissue of the neck and along the right axilla. A pneumothorax with collapse of the right lower lobe and partially medially and partially the right upper lobe is appreciated. A line is visualized overlying the right lateral aspect of the mediastinum." The radiologist's impression

was "Tension pneumothorax of at least 60% as described." Pneumothorax is the presence of air or gas in the pleural cavity.

10. On February 21, 1996, Dr. Garces accordingly proceeded with a second surgery on Patient M.S. to address the pneumothorax.

11. On February 22, 1996, Patient M.S. underwent further surgery to remove a foreign object that was left in his body following the surgery of the day before, the "guide wire" utilized by Respondent during the first surgery on February 21, 1996. The "guide wire" was found in Patient M.S.'s inferior vena cava.

12. Respondent's notes in the medical record for February 21, 1996 contain no meaningful detail concerning the insertion of the CVP catheter, and make no mention of either the placement of or failure to remove the guide wire. Respondent's notes for February 21, 1996 do not indicate that Patient M.S. was monitored during anesthesia for the presence of equal breath sounds on both lungs.

#### COUNT I

13. Petitioner realleges and incorporates paragraphs one (1) through twelve (12), as if fully set forth herein this Count One.

14. Section 458.331(1)(t), Florida Statutes, provides that the Board of Medicine may take disciplinary action against a licensed physician upon the physician's failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

15. Respondent violated Section 458.331(1)(t), Florida Statutes, on February 21, 1996 with regard to Patient M.S., due to one or more of the following facts:

- a. Respondent did not obtain an arterial blood gas baseline for Patient M.S. prior to commencement of anesthesia;
- b. Respondent did not monitor the patient during anesthesia for the presence of equal breath sounds on both lungs;
- c. Respondent lost track of the guide wire in the patient during the surgical procedure;
- d. Respondent did not document in detail the procedure for insertion of the CVP catheter;
- e. Respondent did not document the failure to remove the guide wire from the patient;
- f. Respondent did not advise the patient and/or the patient's family or representative of the failure to remove the guide wire from the patient;
- g. Respondent did not advise the surgeon of the failure to remove the guide wire from the patient.

#### COUNT II

16. Petitioner realleges and incorporates paragraphs one (1) through twenty (20), as if fully set forth herein this Count Two.

17. Section 458.331(1)(m), Florida Statutes, provides that the Board of Medicine may take disciplinary action against a licensed physician upon the physician's failure to keep medical records that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

18. Respondent violated Section 458.331(1)(m), Florida Statutes, on February 21, 1996 with regard to Patient M.S., due to one or more of the following facts:

a. Respondent failed to document an arterial blood gas baseline for Patient M.S. prior to commencement of anesthesia;

b. Respondent failed to document monitoring of the patient during anesthesia for the presence of equal breath sounds on both lungs;

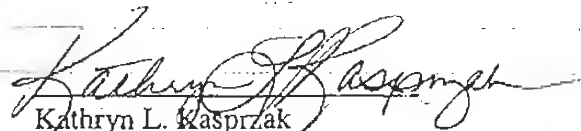
c. Respondent failed to document in detail the procedure for insertion of the CVP catheter;

d. Respondent failed to document the fact that the guide wire was lost in the patient's venous system in the course of the procedure.

WHEREFORE, Petitioner respectfully requests the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license to practice medicine; restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case as provided for in Section 455.624(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 24th day of April, 2000.

Robert G. Brooks, M.D., Secretary

  
Kathryn L. Kasprzak  
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Kathryn L. Kasprzak  
Chief Medical Attorney  
Agency for Health Care Administration  
P. O. Box 14229  
Tallahassee, Florida 32317-4229  
Florida Bar # 0937819

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Vicki R. Elin  
DATE 4-5-2000